

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF VERMONT

UNITED STATES OF AMERICA       \*  
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TERRY VAN MEAD                   \* CRIMINAL FILE NO. 11-87

SENTENCING  
Tuesday, October 2, 2012  
Burlington, Vermont

BEFORE:

THE HONORABLE WILLIAM K. SESSIONS III  
District Judge

APPEARANCES:

CHRISTINA NOLAN, ESQ., Assistant United States  
Attorney, Federal Building, Burlington, Vermont;  
Attorney for the United States

STEVEN L. BARTH, Assistant Federal Public Defender,  
Office of the Federal Public Defender, District  
of Vermont, 126 College Street, Suite 410,  
Burlington, Vermont; Attorney for the Defendant

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1 TUESDAY, OCTOBER 2, 2012

2 (The following was held in open court at 2:40 p.m.)

3 COURTROOM DEPUTY: This is case number 11-87,  
4 United States of America versus Terry Van Mead. The  
5 government is present through Assistant United States  
6 Attorney Christina Nolan. The defendant is present in  
7 the courtroom with his attorney, Steven Barth.

8 The matter before the Court is sentencing.

9 THE COURT: All right. Mr. Barth, have you  
10 received a copy of the presentence report?

11 MR. BARTH: Yes, your Honor.

12 THE COURT: Have you gone over that with Mr.  
13 Mead?

14 MR. BARTH: I have, your Honor.

15 THE COURT: Any factual inaccuracies in the  
16 report?

17 MR. BARTH: No. We commented on those and  
18 were incorporated into the final draft that went to  
19 your Honor.

20 THE COURT: All right. Mr. Mead, have you  
21 read the report?

22 THE DEFENDANT: Yes, I have.

23 THE COURT: Have you gone over that report  
24 with Mr. Barth?

25 THE DEFENDANT: Yes, I have.

1 THE COURT: Any factual mistakes that you saw  
2 in the report?

3 THE DEFENDANT: None that I am aware of.

4 THE COURT: All right. Ms. Nolan any factual  
5 errors?

6 MS. NOLAN: No, your Honor. Thank you.

7 THE COURT: All right. I have read the  
8 presentence report and I have read the sentencing  
9 memorandum of the government and the defense. Obviously  
10 the Court has addressed one of the outstanding issues in  
11 a written opinion.

12 The issues outstanding are a request for a  
13 non-guideline sentence raised by the defendant and also  
14 the government is objecting to not including the  
15 four-level increase for "in relationship to another  
16 offense," that's possession of the firearms in relation  
17 to another offense. I think those are the issues  
18 outstanding; is that correct?

19 MR. BARTH: I think there's some additional  
20 issues outstanding, your Honor. I had filed an  
21 objection to the increase for crimes of violence on two  
22 different crimes, both the burglary, second degree, and  
23 the statutory rape provision. Your Honor specifically  
24 ruled on one of my arguments with regard to the  
25 statutory rape provision. I also raised a vagueness

1 claim with regard to the residual clause which  
2 your Honor relied on in its hold -- finding that  
3 statutory rape provision was a crime of violence under  
4 4B1.2 and United States versus Daye.

5 While I suspect that the Court is not going to find  
6 a residual clause is void for vagueness, I just wanted  
7 to bring that to the Court's attention that is preserved  
8 for appellate review.

9 THE COURT: Okay. The Court implicitly  
10 found --

11 MR. BARTH: Sure.

12 THE COURT: -- that it was not void for  
13 vagueness and will rely upon that in its written order.

14 MR. BARTH: Of course.

15 THE COURT: All right.

16 MR. BARTH: The other crime which was relied  
17 on by the probation office was the burglary. The  
18 burglary remains an outstanding issue. While I -- while  
19 the probation office relied on the residual clause there  
20 so the void-for-vagueness argument would apply to that  
21 enhancement as well, I also raise an issue that we don't  
22 know, the record is not clear as to what Mr. Mead was  
23 convicted of.

24 You may remember, in my initial sentencing papers,  
25 I attached both the charging document as well as what

1       amounted to a judgment and conviction document. It's  
2       not what it was entitled but I think it was uniform  
3       conviction document or some -- I forget the title of it.  
4       But those two documents conflicted. And it was unclear  
5       to me, absolutely unclear, what exactly, if anything,  
6       Mr. Mead was convicted of. And the probation office, in  
7       its response to my objection, which I sent to them prior  
8       to our initial sentencing hearing, acknowledged that the  
9       documents were somewhat confusing in that it's unclear  
10      what if anything he was convicted of.

11             They then went ahead and relied on a presentence  
12      report to find that this was a burglary of a dwelling.  
13      I objected to that saying that burglary of a dwelling  
14      cannot be used to determine what a defendant was  
15      convicted of when you are determining whether something  
16      is a crime of violence. Again, that would be a  
17      categorical analysis. I believe you can only rely on  
18      so-called Shepard documents --

19             THE COURT: Right.

20             MR. BARTH: -- whereas the PSR is not --

21             THE COURT: I want to take a look at that  
22      again, so we're going to take a break in a few minutes,  
23      but let me first deal with the issue about the  
24      four-level increase.

25             Ms. Nolan, do you have --

1 MS. NOLAN: Well, your Honor, before you went  
2 and looked at it, I just wanted to make a few comments  
3 in response, if I could.

4 THE COURT: Sure.

5 MS. NOLAN: We provided a -- the first  
6 certified record of conviction that we got from the  
7 convicting court indicated that he pled to Count 2,  
8 which was burglary of a building as charged in the  
9 indictment. The presentence report indicates that he  
10 pled to burglary -- attempted burglary of a dwelling.

11 We went back to the convicting court -- which was  
12 Count 4 as charged in the indictment, and all of the  
13 papers are attached in my sentencing memo. We went back  
14 to the convicting court and they said it is -- it was an  
15 error, it wasn't accurate to say that it was Count 2.  
16 It was actually Count 4 that he pled to, which is  
17 attempted burglary of a dwelling. And they updated  
18 their certification; I have attached it to my memo.

19 Whether he pled to attempted burglary of a  
20 dwelling, burglary of a dwelling, or burglary of a  
21 building is really -- all three of those are crimes of  
22 violence under very clear Second Circuit case law.

23 The Brown case, which I mentioned at the last  
24 hearing, held that burglary of a building, the very  
25 statute that was charged in the indictment as to Mr.

1 Mead, is a crime of violence. I don't think there's any  
2 dispute or any question that burglary of a dwelling is a  
3 crime of violence. No one doubts that there was a  
4 conviction in that case and the conviction was for a  
5 crime of violence.

6 THE COURT: All right. Well, I didn't address  
7 that in preparation for today's hearing because I  
8 thought that was all resolved. Apparently it is not.  
9 And I need to refresh my recollection about that.

10 If in fact he pled to Count 4, and if that is clear  
11 from the records, and that was an attempted burglary of  
12 a dwelling, there's no question that that is a crime of  
13 violence, and that distinction between building versus a  
14 dwelling becomes irrelevant. So I need to take a look  
15 at that.

16 But before I do that, the other issue outstanding  
17 is the four-level increase for possession of these  
18 firearms in connection with another offense. And that  
19 is, what evidence do you have to suggest that he  
20 committed these home invasions or burglaries prior to  
21 his taking possession of these firearms?

22 MS. NOLAN: Well -- and I did argue this at  
23 the last hearing, and I remember, I didn't think it was  
24 going in my favor, but I --

25 THE COURT: It wasn't.

1 MS. NOLAN: Yeah, I can --

2 THE COURT: My guess is it probably is not as  
3 well here.

4 MS. NOLAN: I am happy to recap in summary  
5 what I would argue; is that he passed through Addison  
6 County at the time. He was in Poultney the night  
7 before, stole a car in Poultney from a young woman,  
8 passed through Addison County on his way up to  
9 Chittenden County where he was stopped for DWI, and  
10 that's when those guns went missing.

11 I would argue that the evidence supports a  
12 preponderance of the evidence finding that he was  
13 somehow involved in the theft of the guns because of  
14 his -- because of the timing, because he in fact had  
15 them and sold them to the gun stores, and because of his  
16 flight from law enforcement, which I think evidences a  
17 consciousness of guilt. So that would be the  
18 government's argument, in summary.

19 THE COURT: Of course he has a pattern of  
20 flying from -- fleeing from law enforcement --

21 MS. NOLAN: That's true.

22 THE COURT: -- on a number of occasions, so --

23 MS. NOLAN: That's true.

24 THE COURT: And he is obviously on the verge  
25 of being caught in possession of a firearm, and that may



1       very well suggest to him that he need flee. So I am not  
2       so sure that his flight is in any way relevant to his  
3       commission of these burglaries, which is of course what  
4       you have to show to get the four-level increase.

5               Is there anything that you want to add to that,  
6       Mr. Barth?

7               MR. BARTH: I don't, your Honor. Unless the  
8       Court has specific questions, I, in short, don't believe  
9       the government has met its burden of proof on this  
10      issue. I will have additional comments regarding the --  
11      what I would call the confusion over the sentencing  
12      documents, but I certainly can wait until the Court has  
13      refreshed its memory on that issue or --

14              THE COURT: Okay. Well, let me also deal with  
15      your issue for request for a variance from the  
16      guidelines. You want to argue that at this point?

17              MR. BARTH: Certainly, your Honor. Of course,  
18      when I made my request to the Court for specific  
19      sentence, that was -- it was unclear at that time what  
20      the Court was going to rule on my guidelines objections.  
21      My guideline calculations, as you may remember, I  
22      believe were 51 -- in the neighborhood of 51 to 63  
23      months. I do stand by the recommendation I made, which  
24      would have been close to the high end of that guideline  
25      range, which is 60 months.

1           THE COURT: Yeah, you had recommended 60  
2 months, and from that I concluded that you, in light of  
3 the ruling setting the base offense level at 24 prior to  
4 adjustment, that you were pursuing a 60-month sentence  
5 which would require a variance.

6           MR. BARTH: Yes, a very fair assumption on  
7 your Honor's part. I would first point out that 60  
8 months, five years, is -- would be significantly longer  
9 than any sentence he has had in the past. My review of  
10 the presentence report indicates that his longest  
11 sentence to date was a 36 or three-month --  
12 three-month -- three-year sentence. Now he has had a  
13 series of convictions, but as far as a single conviction  
14 is concerned, this will likely -- assuming the Court  
15 doesn't go below my recommendation, will easily surpass  
16 his longest jail sentence previously. So this --

17           THE COURT: How long was he in Attica?

18           MR. BARTH: I don't know exactly how long but  
19 I can certainly ask him.

20           THE COURT: Okay.

21           (Defense counsel and defendant confer  
22 briefly.)

23           THE DEFENDANT: Just in Attica itself? For  
24 all of that sentencing time. Two years straight. The  
25 two years and --

1 MR. BARTH: How long did you have?

2 THE DEFENDANT: Attica itself? About eight  
3 months.

4 MR. BARTH: I think the Court probably heard  
5 his answers to the question.

6 THE COURT: Right.

7 MR. BARTH: So I guess that's the first point.  
8 The second point is, I have great hope and I am  
9 heartened by the prospect of Mr. Mead spending his time  
10 in federal custody, that is, I think the programming  
11 that will be available to him, programming that he has  
12 not had in the past, will help him.

13 As I think has been pointed out in my sentencing  
14 papers, a letter that I think Mr. Mead read to the Court  
15 and probably in statements he will make to the Court  
16 today, he's an alcoholic. The vast majority, if not all  
17 of his crimes, stem from binge drinking. He drinks too  
18 much, he cannot deal with the amount he drinks, and he  
19 commits stupid -- makes stupid decisions which amount to  
20 crimes. And so, as I was saying, I think the federal  
21 system will offer him an opportunity that he hasn't had  
22 in the past through the state system.

23 I also take great heart in the fact --

24 THE COURT: How is this particular offense, in  
25 particular, the being in possession of firearms, related

1 to his drinking?

2 MR. BARTH: Oh, well, your Honor, he -- I  
3 think he was intoxicated at -- very intoxicated at the  
4 time of his arrest. Whatever he was doing with those  
5 firearms -- it appears he was reselling them -- was done  
6 while he was intoxicated. I mean, we're assuming now  
7 that he didn't break in and steal those firearms, but he  
8 nonetheless was selling firearms in an intoxicated  
9 state; one could -- in a car, that is alleged to be  
10 stolen. So, so I think his intox -- the fact that he  
11 was inebriated had everything to do with that particular  
12 chain of events which ultimately led to his arrest and  
13 being before your Honor today.

14 I think it affects his decision making. I think he  
15 just makes very poor decisions. I guess, if anything,  
16 there's an argument that the -- the failure to register  
17 is less related to drinking and it's something that took  
18 place over a period of time, but I think it's also  
19 interrelated. When you are drinking that much, when you  
20 are drinking that often, the circuits in your brain  
21 start to -- to cross, and even when the -- the actual  
22 buzz or inebriation wears off, you are not exactly  
23 thinking clearly or making the best decisions.

24 Alcohol has the same effect, I think, as some drug.  
25 When you have a long-term drug addict, even if they

1 detox and they go clean, it's a period of time, I would  
2 say it varies from person to person, drug to drug,  
3 before they're thinking straight again. And, in fact,  
4 Mr. Mead, while he has been in custody, my relationship  
5 with him has evolved over time and I think as his head  
6 grows clearer, as he spends longer in custody with a  
7 sober mind, I think he has been thinking clear. He has  
8 had a more intelligent dialogue with me, and he's seen  
9 things that I have shown him or spoken to him about and  
10 understood them in a way that perhaps he didn't when I  
11 first met him.

12 So, I would say his alcoholism is one of if not the  
13 most important root causes of his criminal history.

14 THE COURT: Well, I appreciate that, but then  
15 I look at the pretrial conduct in the presentence  
16 report, which reads in relevant part: The Marshal  
17 Service revealed Mr. Mead has been a very difficult  
18 inmate to manage. He regularly presents violent  
19 tendencies and behavior, often combative, belligerent,  
20 difficult to deal with when he perceives correctional  
21 staff is fulfilling his needs *[sic]*.

22 That's not alcohol related. That's, as described  
23 later on, mental-health related; isn't it?

24 MR. BARTH: Oh, I think so. I think  
25 absolutely. Look, I think that the alcoholism, the

1       mental-health issues, go hand in hand. We learn that  
2       seeing more and more studies about how the two  
3       exacerbate each other. But I don't know that I would go  
4       so far as to say as nothing to do with alcohol,  
5       your Honor. Again, I think a person gets into a way of  
6       thinking, a pattern of thinking, they're -- the abuse  
7       that they put their system through, and the culture with  
8       which they have lived for however many years, it's hard  
9       to shake. And when you are in custody, I think it's  
10      even harder to shake despite the fact that you aren't  
11      consuming alcohol.

12               He hasn't consumed any alcohol since he has been in  
13      custody. I think he has probably had opportunities to,  
14      but he hasn't. There's been no allegation that he has  
15      used alcohol. And that's been -- and I would give him  
16      credit for this, from the day one I met him, that was a  
17      priority of his to --

18               THE COURT: Where has he been housed?

19               MR. BARTH: Well, he has been housed in a  
20      number of different places. Essex -- I'd say Essex was  
21      the longest, which is in New York. Strafford. But he  
22      has been bounced around quite a bit. Of course he has  
23      been in Northwest.

24               THE DEFENDANT: Springfield, St. Johnsbury.

25               MR. BARTH: Oh.

1 (Defense counsel and defendant confer  
2 briefly.)

3 MR. BARTH: So, as the Court may recognize, he  
4 came here from a state incarceration, so he also  
5 informed me that some time in St. Albans and  
6 Springfield.

7 THE COURT: Okay.

8 MR. BARTH: He has been bounced around a  
9 number of -- four, five different institutions,  
10 your Honor.

11 THE COURT: All right.

12 MR. BARTH: This is a man who, you know, has  
13 told me he loves construction, he loves building things,  
14 he likes to see things grow, he likes to see the fruits  
15 of his labor. He is a man who is extremely well-read.  
16 He is a religious man who studies religion. He has read  
17 the Bible. He has read the Quran. He has read the  
18 Torah, the Old Testament and New Testament, and actually  
19 through his study has converted to Judaism. As the  
20 Court may have learned, the prisons have been  
21 accommodating his meal requirements, his observance of  
22 the holidays, et cetera.

23 So, this is a person who's intelligent, has the  
24 ability to be a hard worker, and I think all of those  
25 things make sense for him and can be his as long as he

1 remains sober. And so we are going to make requests for  
2 designation from your Honor. One of them will be to  
3 send him to a facility that will be able to help him  
4 with his mental health issues. I would suggest  
5 recommendation for Devens. I understand he may not go  
6 there, or he may not go there immediately, but I think  
7 given counseling for his mental health issues is  
8 important; but also, in the alternative, I would ask for  
9 a drug treatment program, I think the 500-hour drug  
10 treatment program to address his alcohol issues, his  
11 alcoholism and his abuse of alcohol, to give him the  
12 tools when he is out to succeed.

13 And, you know, the guideline numbers here are huge.  
14 You know, the guideline we are dealing with, the gun  
15 guideline, incorporates the career offender guidelines.  
16 And, you know, once you have two crimes of violence, as  
17 determined by the court, the sentencing court, your  
18 guidelines go extremely high. We are talking about the  
19 difference here of -- if the Court had granted my  
20 objections and my reading of the statutory rape, and if  
21 the Court were to follow or agree with my argument  
22 regarding the confusion regarding the burglary, we were  
23 talking about a four-to-five-year sentence. Instead, we  
24 are talking about guideline ranges over 10 years.

25 I just think 10 years is too much. I think five



1 years is a long time. I think that that will give him  
2 time to understand and reflect on his actions but also  
3 give him time to address his mental health issues, to  
4 address his alcoholism, and hopefully get some  
5 additional vocational training. And so I think that's  
6 an appropriate sentence.

7 THE COURT: Well, just to briefly respond --

8 MR. BARTH: Sure.

9 THE COURT: -- there's no question that  
10 there's an increase to level 24 based upon the crimes of  
11 violence, in particular, and the reason for that,  
12 frankly, is that possession of guns for those who have  
13 been convicted of crimes of violence is a more serious  
14 offense. It is not to the point of a career offender,  
15 he would be obviously much higher, or armed career  
16 criminal or anything else of that sort. But there is a  
17 particular purpose why level 24 is what it is.

18 MR. BARTH: I don't know what he would be at  
19 at career offender. Certainly the Armed Career Criminal  
20 Act would be much higher, at least -- even with the  
21 worst or the -- if I were to lose all arguments and the  
22 guidelines that applied as the probation officer  
23 suggests, those are still less than 15 years. Certainly  
24 that was something we were hopeful to avoid, and we  
25 have. But I don't know about career offender because

1       that's tied to the statutory maximum, and both of these  
2       crimes have limited statutory cap, I think 10 years on  
3       both, if I remember correctly.

4               THE COURT: It would be much higher, but  
5       regardless.

6               MR. BARTH: It would in any event.

7               THE COURT: Does your client wish to address  
8       the Court?

9               MR. BARTH: He does, your Honor. He has  
10      written a letter which I think you --

11              THE COURT: Okay.

12              THE DEFENDANT: Your Honor, I'm sorry for  
13      being here -- I'm sorry to have to be here today in  
14      front of you for sentencing. I know I have done many  
15      things wrong, and I hope the future will be better. I  
16      understand that you have to sentence me today, and I  
17      take full responsibility for all my actions that I have  
18      done in the past.

19              Your Honor, alcohol has played a very bad part of  
20      my decisions. All my criminal history stems from  
21      decisions I made while under the influence. This  
22      problem, alcohol, has ruined my life and others. While  
23      I know you are going to give me a lengthy prison  
24      sentence, I know that I fully intend to better myself  
25      and get control of my alcohol problem and emerge from

1 custody a better person and productive member of  
2 society.

3 Your Honor, I have two very special -- I have two  
4 very special people in my life who love me very much --

5 (Defense counsel and defendant confer  
6 briefly.)

7 THE COURT: If I recommend the 500-hour  
8 program, you'd participate in it?

9 THE DEFENDANT: Yes.

10 THE COURT: And what do you hope to do when  
11 you get out, Mr. Mead? Where do we go from here because  
12 you have got a history of confronting authority figures,  
13 law enforcement. Where do we go from here?

14 THE DEFENDANT: I think my biggest problem is,  
15 is that I always return to the same area, to the same  
16 people, doing the same shit.

17 THE COURT: You mean to Granville, New York  
18 area or --

19 THE DEFENDANT: Granville, Rutland, that area.  
20 My children live overseas, so it's kind of hard for me  
21 with my kids, so.

22 THE COURT: Well, where would you want to go  
23 if you were released? When you are released?

24 THE DEFENDANT: I think about going back to  
25 Pennsylvania because it's a better area. People don't

1 know me very well. I could start over. Plus, I mean --

2 THE COURT: And what about mental health  
3 treatment? Do you want to get involved in mental health  
4 treatment?

5 THE DEFENDANT: Yes, that's what I have talked  
6 to my attorney about. I do want to get it. I mean,  
7 it's gotta be right. I mean, lately I haven't been  
8 getting in any trouble. I have been trying to mellow  
9 out, trying to do the right thing.

10 My problem, a lot, I guess, is that I don't respect  
11 authority very much sometimes. But that's from my --  
12 from never getting a chance when I was a kid, you know.  
13 I just want to start a foundation for my kids.

14 THE COURT: The problem, Mr. Mead, in your  
15 situation, that's self-defeating. You don't listen to  
16 authority figures, you are going to have an authority  
17 figure when you are released.

18 THE DEFENDANT: Yes.

19 THE COURT: A probation officer.

20 THE DEFENDANT: I understand.

21 THE COURT: Or you are going to have law  
22 enforcement contacts like all -- if you react in such a  
23 way as to flee or to confront or to pose a danger to  
24 those people who are authority figures in your life, the  
25 person who ultimately loses most, assuming you get out

1 of the situation with no violence, is you.

2 THE DEFENDANT: I understand that. That's why  
3 I was just saying that I have been trying to do better  
4 by listening to the authorities and trying to cope with  
5 my own problems without having to lash out at people,  
6 and try to better myself so I don't have all these  
7 issues all the time, because I know it's wrong. I don't  
8 want to be that way and I don't want my kids to see  
9 that. So I'm trying.

10 THE COURT: All right.

11 MR. BARTH: Your Honor, if I may briefly?

12 (Defense counsel and defendant confer  
13 briefly.)

14 MR. BARTH: Your Honor, if I may, I just want  
15 to finish reading his letter to the Court. It's very  
16 short.

17 THE COURT: Yes.

18 MR. BARTH: Thank you.

19 He left off about, "Your Honor, I have two very  
20 special people in my life who love me very much, my  
21 children, age 11 and 10." I believe they're actually  
22 now age 12 and 11 since he wrote this prior to our first  
23 hearing.

24 "They live in Australia and I write them regularly.  
25 I am proud of them. They are great in school and have

1       compassion for others. I received a Christmas card from  
2       my daughter this year, and she told me she was proud I  
3       was her dad. This meant everything to me. Now I  
4       realize how important they are and how much more I owe  
5       them as a father. I want to be better and will be for  
6       myself and them.

7                >Your Honor, I have been studying religion quite a  
8       bit. Luke 6:37 says forgive and you will be forgiven.  
9       Your Honor, it is my hope that the victims of my crimes  
10      can some day forgive me. Of course, I beg forgiveness  
11      from you and my higher power."

12              THE COURT: Okay. All right. Does the  
13      government want to respond?

14              MS. NOLAN: Yes, your Honor.

15              The government feels very strongly that this is a  
16      guidelines case. I know your Honor's probably not going  
17      to find the guideline range to be as the government's  
18      advocated, but wherever -- if you find it to be, as the  
19      probation office finds it, we would ask strenuously,  
20      strongly, for a guideline sentence.

21              This is not just a case where the defendant  
22      purposefully concealed his whereabouts from the sex  
23      offender registry, which is a serious crime. While he  
24      was purposefully hiding, he committed a series of  
25      menacing crimes. The June 2010 assault on the

1 girlfriend was just a vicious beating. He beat her once  
2 in a gazebo; then he took her for a walk and beat her  
3 again and she ended up in the mud and she sustained some  
4 pretty bad injuries.

5 And he didn't -- he served two months in jail for  
6 that crime and didn't register afterwards. And by the  
7 way, not all of his crimes are connected to alcohol, but  
8 I don't want to bog down on that too much.

9 Also while unregistered, he engaged in this very  
10 dangerous DWI with guns involved, with a loaded revolver  
11 shoved between the seats, fled law enforcement, and of  
12 course all of this comes against a backdrop of 20 years,  
13 20 years of consistently endangering the community.

14 There are two offenses involving sexual  
15 exploitation of minors. It's not alcohol that causes  
16 people to exploit children, at least not in and of  
17 itself. It's something else. And I think it's really  
18 an antisocial personality that we are dealing with here  
19 and I think the PSR supports that.

20 There are burglaries, two of them on his record.  
21 The child exploitation offenses. We see brutalization  
22 of women. There's really no other way to put it. I  
23 mean, he is leaving women bloodied. We see three DWIs.  
24 We're fortunate know one died in those incidents. And  
25 of course guns. He has got five felonies before this.

1           And I do think your Honor has to seriously consider  
2     the hostility and aggression toward authorities. I  
3     mean, spitting at officers and telling them they're  
4     going to get AIDS, you know, running in this most recent  
5     incident in the area of a daycare, fleeing from law  
6     enforcement, the pretrial conduct while in jail, the  
7     refusal to be fingerprinted during the June assault  
8     arrest, this is just an extraordinarily dangerous  
9     person, your Honor.

10           And the government is -- is urging you, in the  
11    strongest terms, to please protect the public and please  
12    impose a guideline sentence.

13           THE COURT: All right. All right. I am going  
14    to take this under advisement just -- this is only going  
15    to be 10 minutes, so ask that he stay here. Just going  
16    to be a couple minutes, and I will be right back.

17    (Court was in recess at 3:10 p.m.)

18    (The following was held in open court at 3:15 p.m.)

19           THE COURT: All right. I have had a chance to  
20    go back and take a look at the actual documents  
21    themselves, and let me summarize it as follows:

22           The question is whether the burglary conviction was  
23    a crime of violence. First, as a threshold issue, if  
24    the burglary conviction was of a dwelling, it clearly is  
25    a crime of violence. Four-count indictment rendered



1       against Mr. Mead.

2               The interesting thing is that on the first docket  
3       sheet coming back to probation and to the parties,  
4       there's a reference to an attempted burglary of a  
5       dwelling, and then it's referred to as Count 2. In  
6       fact, Count 4 is the attempted burglary of the dwelling.  
7       And then there is obviously a change indicating clearly  
8       that he pled to Count 4, which is the attempted burglary  
9       of a dwelling.

10              It's clear that the -- that the court made a  
11       mistake when it referred to Count 2 because he actually  
12       referred to it as an attempted burglary of a dwelling.  
13       So that, you know, resolves the issue. The Court  
14       specifically finds that he was convicted of Count 4.

15              Now, the interesting question about the Taylor  
16       analysis that the defense has raised is an interesting  
17       one. You -- Taylor suggests that there's certain  
18       documents that courts can refer to in determining what  
19       is a crime of violence and not a crime of violence, and  
20       in this particular point -- case, there was a reference  
21       to a presentence report which clearly indicated that he  
22       pled to Count 4.

23              Here, this is not being relied upon when you go  
24       back to the Taylor document, that's the presentence  
25       report, not for the underlying facts. It's just merely

1 to find out what the court did. That's essentially it.

2 So the Supreme Court in Taylor basically said,  
3 well, you can't go determine facts based upon reviewing  
4 documents other than charging documents or the few  
5 documents which are accepted.

6 This is not what is being done here. It's merely  
7 going back to the presentence report to determine what  
8 in fact he pled guilty to. And I don't think that the  
9 Taylor analysis comes into play. This is just a  
10 guideline by which the parties can rely in determining  
11 what he pled to, not what the underlying facts are.

12 So it's clear he pled -- in my mind, he pled to  
13 Count 4, which is an attempted burglary of a dwelling;  
14 that's a crime of violence. But the Court is also now  
15 aware of the United States versus Brown, which reside in  
16 a -- in a -- just in a burglary of a building in New  
17 York State. The Second Circuit has said that based upon  
18 the residual clause, that that is a crime of violence.  
19 The Court will rely upon that as an alternative. But  
20 essentially it's an issue of -- it's not necessary  
21 because the Court finds that the clear item that he pled  
22 to is Count 4, and that is a crime of violence because  
23 it's burglary into a dwelling. So as a result, the  
24 offense level of 24 will be applied.

25 You want to say something else?

1 MR. BARTH: If I may, just to complete my  
2 record?

3 THE COURT: Yes.

4 MR. BARTH: I understand the Court's ruling.  
5 I would -- I would point out a couple of things. First,  
6 I don't understand, and it is unclear to counsel, how  
7 you can -- I don't mean you, the Court, but the New York  
8 courts have one document which shows he pleads to Count  
9 2, and then when a discrepancy is brought to their  
10 attention, there is another document --

11 THE COURT: But just before you go beyond that  
12 point, look at that document.

13 MR. BARTH: Yes.

14 THE COURT: You see where it says Count 2?

15 MR. BARTH: Yes.

16 THE COURT: How does it describe it?

17 MR. BARTH: I'm sorry, which one are we  
18 looking at? The -- the initial one that --

19 THE COURT: I assume that you are looking  
20 at -- just start with the initial one.

21 MR. BARTH: Okay. Sure.

22 THE COURT: Okay?

23 MR. BARTH: Yep.

24 THE COURT: You are looking at the item to  
25 which he pled guilty. It says Count 2. Now, the one I

1 have looked at says right before that attempted burglary  
2 of dwelling.

3 MR. BARTH: Yep.

4 THE COURT: Does it say that?

5 MR. BARTH: ILL entry dwelling. So I assume  
6 that means illegal entry dwelling.

7 THE COURT: Okay.

8 MR. BARTH: Yes.

9 THE COURT: That's Count 4.

10 MR. BARTH: Correct.

11 THE COURT: In the indictment, that's Count 4.  
12 That's what he pled to. They may have said 2 by  
13 mistake, but that's what he pled to.

14 MR. BARTH: Sure. And when I say "sure," I am  
15 disagreeing with the Court, but --

16 THE COURT: Sure.

17 MR. BARTH: -- I understand what you are  
18 saying.

19 THE COURT: That's okay.

20 MR. BARTH: I would point out one other  
21 discrepancy. I am troubled by the fact that when --  
22 when the discrepancy is pointed out to the Court, they  
23 just issue a new uniform sentencing document, but even  
24 in the -- in the so-called corrected version that the  
25 government procured, it still said attempted burglary.

1 And he didn't plead to -- I mean, there's no attempt in  
2 the indictment.

3 You may remember our discussion last time that  
4 Ms. -- Assistant United States Attorney Nolan suggested,  
5 well, that's a lesser included, and of course it's not.  
6 Attempt is a specific intent crime which requires an  
7 overt acts -- an overt, which is a substantial step for  
8 completion of the underlying crime, or substantive  
9 crime. And so I still remain confused about this,  
10 your Honor.

11 Even if you read, you know, the so-called corrected  
12 uniform sentence and commitment form, we are left with a  
13 different crime than is found anywhere in the charging  
14 document that the Court has before it. And my point --  
15 the government correctly cites Brown. You know, I don't  
16 agree with Brown for the same reasons that we have  
17 argued about other -- you know. But how do we know what  
18 he pleaded guilty to with the documents that are before  
19 the Court?

20 I understand the Court's ruling. I don't want to  
21 quibble. I just want to perfect my record.

22 THE COURT: Sure. I appreciate that. But of  
23 course you acknowledge Brown. You acknowledge the  
24 Second Circuit issued an opinion --

25 MR. BARTH: Yes.

1 THE COURT: -- to which you do not agree,  
2 but --

3 MR. BARTH: Correct.

4 THE COURT: -- it certainly would apply. And  
5 under Brown, it doesn't make any difference whether he  
6 pled to Counts, 1, 2, 3 or 4; it's a crime of violence.

7 MR. BARTH: Yes, and perhaps my point, which I  
8 am not articulating well, is because we don't have a  
9 single document, sentencing document matching up with  
10 indictment, whether it's the original uniform sentencing  
11 form that was given to the parties by the Court or the  
12 corrected one, we don't know what he was convicted of,  
13 what he pleaded guilty to. We are assuming, we are  
14 speculating, or at least the government is, and the  
15 Court is holding, that it had to be one or the other:  
16 burglary of a dwelling or burglary of some building and,  
17 thus, it's a crime of violence under 4B1.2 any way you  
18 slice it, in light of the Brown case and the residual  
19 clause.

20 And my argument, perhaps subtle and certainly not  
21 winning the day, but the point is how do we know with  
22 the document, how can we be sure that this was what he  
23 was convicted of. How do we know it wasn't a larceny.

24 THE COURT: That's discounting the impact of  
25 the presentence report that was reviewed by the

1       probation officer, and if you read the Taylor opinion,  
2       it tells the courts not to find out what the underlying  
3       facts of a case are to make an assessment as to whether  
4       they're crimes of violence. That does not necessarily  
5       suggest that you can't go to other documents like plea  
6       agreements to try to figure out what did the person  
7       plead to, what was he sentenced for.

8               MR. BARTH: And I understand the distinction  
9       the Court is making that Taylor is determining, once  
10      we -- the second step of the Taylor analysis and the  
11      categorical approach is looking at, you know, once we  
12      know what statute he was convicted of, what crime within  
13      that statute. I don't necessarily read Taylor and its  
14      progeny to suggest that what I am saying, figuring out  
15      what he actually was convicted of, that we can then look  
16      to anything, whether it be judicially noticeable  
17      document or not. And certainly a plea agreement is a  
18      judicially noticeable document. So I would have no  
19      grounds to quibble with a plea agreement or a plea  
20      colloquy or a plea transcript as long as it was clearly  
21      authentic. But that's not what we're dealing with.

22             I understand the Court's point. I again don't want  
23      to quibble with the Court. I think I have laid my  
24      record.

25             THE COURT: Okay.

1 All right. So I have reviewed, in detail, the  
2 presentence report and the sentencing memoranda. Mr.  
3 Mead, I -- I am faced with a really difficult decision  
4 because on the one hand you have a -- a history of  
5 violence or using violence or threats of violence in the  
6 face of authority or others that is shocking and  
7 long-standing. You have been in and out of courts for  
8 years and years and years. Frankly, that's a history  
9 which would call for a sentence of a sufficient length  
10 to incapacitate you so that you no longer create a risk  
11 to the community. And I think it certainly calls for --  
12 for a guideline sentence.

13 I am also impressed, frankly, with your commitment  
14 to the two children and your statement about mental  
15 health and drugs.

16 Based upon your entire record, the Court feels that  
17 the guideline range is the appropriate one. I am going  
18 to sentence you at the low end of the guidelines as  
19 opposed to what I may have done before, with a whole  
20 list of recommendations to the Bureau of Prisons as well  
21 as treatment providers when you are released into the  
22 community to make sure that when you come back, you have  
23 got the support systems necessary to be able to make it  
24 because the next time around for you obviously could  
25 result in life sentences or certainly career offender.



1           So the Court is going to deny the request for a  
2       non-guideline sentence, impose a guideline sentence, and  
3       the Court finds as follows:

4           The offenses of violating the Sex Offender  
5       Registration and Notification Act, in violation of 18  
6       USC, section 2250, and possession of stolen firearms, in  
7       violation of 18 USC, section 922(j) and 924(a)(2)  
8       occurred from in or about the summer of 2010 through the  
9       fall of 2010. The guidelines apply.

10          The Counts 1 and 2 are grouped.

11          Actually, I don't think I officially denied the  
12       government's request for the four-level increase at the  
13       earlier hearing. Perhaps I suggested to the  
14       government -- obviously I must have -- that I was going  
15       to rule against them. I agree with the findings of the  
16       probation office that there should not be a four-level  
17       increase. There's no real direct evidence to suggest  
18       that he was involved in a burglary; just that he was in  
19       possession of firearms within a relatively short time  
20       frame. And I also think that the penalties covered by  
21       this particular sentence are sufficient -- sufficient to  
22       meet the purposes of sentencing.

23          So Count 1, SORNA: The guideline for this offense  
24       is found in section 2A3.5. Defendant is a -- was  
25       required to register as a tier II sex offender. Base

1 offense level 14.

2 Specific offense characteristics do not apply.  
3 Guideline two of the guideline for this offense is found  
4 in 2K2.1. The defendant committed the instant offense  
5 subsequent to sustaining at least two felony convictions  
6 for crimes of violence. Base offense level is 24.

7 The following specific offense characteristics  
8 apply: Because there were between eight and 24  
9 firearms, there's a four level increase. Two-level  
10 increase for the possession of stolen firearms. That's  
11 a six-level increase. The multiple count adjustment  
12 under 3D1.1, one unit is assigned. There's no further  
13 adjustment to the offense level. Adjusted offense level  
14 is 30.

15 Three-level reduction for acceptance of  
16 responsibility.

17 The defendant has 21 criminal history points,  
18 resulting in a criminal history category of six.

19 The guideline imprisonment range is 130 to 162  
20 months.

21 The authorized term of supervised release is five  
22 years to life. And probation is not authorized.

23 It is the sentence of the Court the defendant be  
24 committed to the custody of the Federal Bureau of  
25 Prisons for a term of 65 months on Count 1, 65 months on

1 Count 2, each count to run consecutively, for a total of  
2 130 months, to be followed by a five-year term of  
3 supervised release.

4 Conditions of supervised release are as follows:

5 The defendant shall not commit any crimes, federal,  
6 state or local.

7 He should not possess any illegal controlled  
8 substances.

9 He shall abide by the standard conditions of  
10 supervision recommended by the Sentencing Commission.

11 He shall not possess a firearm or other dangerous  
12 weapon.

13 He shall participate in a program approved by the  
14 U.S. Probation Office for substance abuse, which program  
15 may include testing to determine whether the defendant  
16 has reverted to the use of drugs or alcohol.

17 The defendant shall contribute to the costs of  
18 service rendered in an amount to be determined by the  
19 probation officer based on ability to pay or the  
20 availability of third-party payment.

21 He shall refrain from the use of alcohol and other  
22 intoxicants during and after treatment.

23 He shall participate in a mental health program  
24 approved by the U.S. Probation Office.

25 The defendant shall contribute to the costs of

1 services rendered in an amount to be determined by the  
2 probation officer based on ability to pay or the  
3 availability of third-party payment.

4 He shall refrain from any unlawful use of a  
5 controlled substance and submit to a drug test within 15  
6 days of release on supervised release and at least two  
7 periodic drug tests thereafter for use of a controlled  
8 substance.

9 He shall not possess images or videos depicting  
10 sexually explicit conduct involving adults, child  
11 pornography, or visual or text content involving minors  
12 which has sexual, prurient or violent interests as an  
13 inherent purpose.

14 He shall avoid and is prohibited from being in any  
15 areas or locations where children are likely to  
16 congregate such as schools, daycare facilities,  
17 playgrounds, theme parks, arcades, recreational  
18 facilities, or recreation parks unless prior approval  
19 has been obtained by the probation office.

20 He shall register as a sex offender in any state  
21 where the defendant resides, is employed, performs  
22 volunteer service, carries on a vocation, or is a  
23 student, as required by law.

24 He shall not associate or have any contact directly  
25 or indirectly with persons under the age of 18 except in

1 the presence of a responsible adult who is aware of the  
2 nature of the defendant's background or who has been  
3 approved in advance by the probation officer.

4 He may not use sexually-oriented telephone numbers  
5 or services.

6 He should submit his person and any property,  
7 house, residence, vehicle, papers, computer or  
8 electronic communications or data storage devices, or  
9 media and effects to search at any time with or without  
10 a warrant by any law enforcement or probation officer  
11 with reasonable suspicion concerning a violation of a  
12 condition of supervised release, probation or unlawful  
13 conduct by the person, and by any probation officer in  
14 the lawful discharge of the officer's supervision  
15 functions. Such searches may include the removal of  
16 such items for the purpose of conducting a more thorough  
17 inspection. The defendant shall inform other residents  
18 of this condition. Failure to submit to a search may be  
19 grounds for revocation.

20 He shall cooperate in the collection of DNA as  
21 directed by the probation officer.

22 The guideline fine range is \$12,500 to \$500,000.  
23 He has demonstrated an inability to pay a fine. The  
24 fine is waived.

25 Special assessment of \$200 is ordered, due

1 immediately.

2 Now, the Court's going to recommend the following:

3 First, that this defendant participate in the  
4 500-hour drug and alcohol rehabilitation program  
5 sponsored by the Bureau of Prisons. If he has not  
6 successfully completed that program by the end of his --  
7 well, if he has not successfully completed the program,  
8 he should participate in the nonresidential drug and  
9 alcohol rehabilitation program sponsored by the Bureau  
10 of Prisons. If he has not completed either of those  
11 programs, then the Court recommends to the probation  
12 officer when he is released that he participate in  
13 intensive and, if necessary, residential drug and  
14 alcohol treatment at the time of his release.

15 Second, the Court recommends to the Bureau of  
16 Prisons that he participate in mental health counseling,  
17 and the Court specifically finds that there's a mental  
18 health component to the commission of these particular  
19 crimes as well as his use of alcohol, and that unless  
20 that concern is addressed by the Bureau of Prisons, he  
21 could -- he could pose a risk to the community in the  
22 future. So, as a result, he needs to participate in  
23 mental health counseling.

24 And, again, the recommendation is to the probation  
25 office that -- that he participate in intensive mental

1 health treatment upon his release if he has not  
2 successfully participated in mental health counseling in  
3 the Bureau of Prisons.

4 Next, the Court specifically recommends that he be  
5 designated to a facility, when he is close to release,  
6 that provides mental health treatment; in particular,  
7 the Court recommends that he go to FCI Devens, which has  
8 mental health programs as part of their programming.

9 Next, when he is to be released to the community,  
10 the Court at this point recommends that he go to a place  
11 other than the New York/Vermont area. The defendant has  
12 expressed an interest and need to adjust to a new  
13 community, and that should be planned for by the Bureau  
14 of Prisons as he is to be released.

15 Both the defendant and the government may have the  
16 right to appeal this sentence as set forth in Title 18  
17 U.S. Code, section 3742. If the defendant is unable to  
18 pay the costs of an appeal, he has the right to apply  
19 for leave to appeal *in forma pauperis* and request the  
20 court to appoint counsel for him. If the defendant so  
21 requests, the clerk of court shall prepare and file  
22 forthwith a notice of appeal on behalf of the defendant.  
23 Notice of appeal by the defendant must be filed within  
24 14 days of the date judgment is entered on the docket,  
25 pursuant to Rule 4(b) of the Federal Rules of Appellate

1 Procedure.

2 All right. Anything -- anything further from --

3 MS. NOLAN: The government moves to dismiss  
4 Count 3.

5 THE COURT: That motion is granted. Anything  
6 further?

7 MR. BARTH: Your Honor, if I may just say one  
8 thing. I know my client would be remiss if I forgot to  
9 say this. And I appreciate the Court's patience.

10 On October 28th, 2010, he was arrested for the  
11 unlawful mischief and resisting arrest, which is  
12 paragraph 67 in the presentence report. My client has  
13 pointed out to me, and I simply forgot to mention it to  
14 the Court, that he was sentenced to four to five months  
15 but had been in custody for much longer than that, and  
16 essentially served nearly four months, about three and a  
17 half months. He had asked me to do this, and I forgot.  
18 If the Court -- because I do not believe he is going to  
19 get credit for it from the Bureau of Prisons, that the  
20 Court credit him that three to four months that he  
21 overstayed on the sentence prior to the plea deal struck  
22 with the state.

23 THE COURT: All right. Well, let's go through  
24 this once again because the Bureau of Prisons would, in  
25 fact, give him credit for any time that he did not -- or



1       that he served in excess of what was required by the  
2       state sentence.

3               So he is convicted of the DWI on 7/15/2011. He's  
4       arrested on October 28. So he receives four to five  
5       months concurrently. Okay?

6               MR. BARTH: Yes.

7               THE COURT: He would be specifically entitled  
8       to credit any time after the end of February of 2010.  
9       What you are suggesting is the time between February of  
10      2010 and July of 2011 he would receive no credit?

11              MR. BARTH: Yes. And the reason, I believe,  
12      what I suspect happened here, your Honor, was they had  
13      the case for this -- the Court may remember my math is  
14      terrible, but ballparking it, about nine months, and  
15      during that time there were plea negotiations. And come  
16      the nine-month mark, it appears he pled to a -- some  
17      sort of lesser sentence, lesser crime that had a smaller  
18      sentence and he got sentenced to four to five months,  
19      which had come and gone. He served already four months  
20      longer than the max, five months.

21              THE COURT: Right. And so he is left with  
22      four, five months of no credit for anything.

23              MR. BARTH: Right, because --

24              THE COURT: Okay. I am going to make a  
25      specific recommendation to the Bureau of Prisons that he

1 receive credit from the date when his state sentence was  
2 completed, and my estimate would be that would begin in  
3 the beginning of March of 2011, because after that he is  
4 getting no credit for anything, and he should be getting  
5 credit toward the service of his federal sentence. So I  
6 am going to make that specific recommendation. If that  
7 is not complied with, then I bet you will let me know.

8 MR. BARTH: Well -- and I want to say thank  
9 you for hearing me out on that.

10 THE COURT: Okay. Anything else at this  
11 point?

12 MS. NOLAN: No, thank you, your Honor.

13 THE COURT: You have no objection to that,  
14 right? He has got five months that nothing's happening.

15 MS. NOLAN: He should get credit for all the  
16 time he has served.

17 THE COURT: Okay.

18 MR. BARTH: Thank you.

19 THE COURT: Thank you.

20 (Court was in recess at 3:38 p.m.)

21 \*\*\* \*\* \*\*\*

22 C E R T I F I C A T I O N

23 I certify that the foregoing is a correct transcript from the  
24 record of proceedings in the  
25 above-entitled matter.



January 14, 2013  
Date

\_\_\_\_\_  
Anne Nichols Pierce